Permit No: NDR32-0000
Effective Date: July 1, 2009
Expiration Date: June 30, 2014

AUTHORIZATION TO DISCHARGE UNDER THE

NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

facilities both qualifying for and satisfying the requirements identified in Part I of this permit

are authorized to discharge stormwater associated with mining, extraction or paving material preparation activities

to waters of the state

in accordance with conditions set forth in this permit.

This permit and the authorization to discharge shall expire at midnight,

June 30, 2014.

Signed this 18th day of June, 2009.

Dennis R. Fewless, Director
Division of Water Quality

BP 2008.10.08

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OUTFALL DESCRIPTION

Stormwater Drainage Outfall(s) – Active. Stormwater discharges. The stormwater discharges from a pipe, ditch, or other discrete conveyance to receiving waters.

PERMIT SUBMITTALS SUMMARY

Coverage Point	Submittal	Frequency	First Submittal Date
Facility	Annual Inspection Summary	Annually	January 31, 2010
Sampled discharge points	Discharge Monitoring Report	Annually	January 31, 2010
New Applicants	Application	1/permit cycle	7 Days prior to start of operation

Applications and reports shall be submitted to the Department at the following address:

North Dakota Department of Health
Division of Water Quality
918 East Divide Ave
Bismarck, ND 58501-1947

I. PERMIT COVERAGE AND LIMITATIONS

A. Discharges Covered

1. This permit applies to all areas within the jurisdiction of the state of North Dakota.

2. This permit applies to discharges composed (either in whole or in part) of stormwater associated with industrial activity as defined in 40 CFR 122.26(b)(14) from any of the following:

   a. Operations involved in mining or extracting activities, including processes to prepare materials for use, SIC Codes between 12 and 14;

   b. Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611, 2951 and some 327;

   c. Equipment storage and maintenance yards supporting the industrial categories identified above.

3. Certain non-stormwater discharges from facilities covered by this permit and meeting the requirements specified in Part II.A.

B. Coverage Limitations

This permit does not cover the following activities:

1. Stormwater discharges from facilities or activities subject to a nationally established effluent limitations guideline or other performance standard under 40 CFR subchapter N.

2. Discharges or releases that are not stormwater except those non-stormwater discharges authorized under Part II.A.

3. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a Stormwater Pollution Prevention (SWPP) plan that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, the SWPP plan must incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to the facility's discharge, the permittee must incorporate that allocation into the SWPP plan and implement necessary steps to meet that allocation.

4. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).

5. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA). It is your responsibility to ensure the project and resulting discharges comply with the respective requirements.

6. Stormwater discharges that the Department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards.

C. Obtaining Coverage and Authorization Effective Date

1. To obtain authorization under this general permit for stormwater discharges you must submit a complete application and develop a Stormwater Pollution Prevention (SWPP) plan in accordance with Part II.C of this permit. A plan must be in place as a condition of this permit and a copy of the plan must be retained by the operator of the facility. A copy of the plan must be submitted with the application for certain facilities as described in Part I.D.3.

2. Permit coverage will become effective 7 days after you submit a complete application unless otherwise notified by the Department (based on the earlier of postmarked date or department date-stamp).

3. Upon the effective date of permit coverage you, as the permit applicant, are authorized to discharge stormwater from eligible activities under the terms and conditions of this permit.

D. Application Contents

1. You may use a Notice of Intent (NOI) form (or photo copy thereof) to complete your application. The NOI form (SFN 18686) is available at:

   http://www.ndhealth.gov/WQ/Storm/StormWaterHome.htm .

2. The application shall contain, at a minimum, the following information:

   a. Name and mailing address of the owner or operator
   b. Contact name and phone number
   c. Name of facility or site
   d. A brief description of the nature of business or activity
   e. Standard Industrial Classification (SIC) Code
   f. Acreage of the facility dedicated to industrial activity.
   g. Location of the site(s), including the county, latitude and longitude or township, range, section, and 1/4 section
   h. Name of receiving water(s) or the name of the receiving municipal storm sewer system and receiving water(s)
   i. The signature of the applicant(s), signed in accordance with Signatory Requirements of this permit.

3. You must include a copy of the Stormwater Pollution Prevention (SWPP) plan if either of the following apply:

   a. The facility will occupy 50 acres or more (area dedicated to industrial activities); or
   b. The facility will have a discharge point located within 2000 ft of, and flow to, a water body listed as impaired under section 303(d) of the Federal CWA due to sediment or parameters associated with sediment transport (see 303(d) List on the Department's website).

4. An operator of multiple temporary or portable operations may submit a single application for such activities. The operator must provide a copy of the SWPP plan for any locations that meet the criteria listed in previous item (Part I.D.3) prior to beginning operations on the site.

5. Operators of oil or gas extraction facilities (SIC codes 13) that experience a stormwater discharge resulting in or contacting a reportable quantity release of oil or hazardous substance (release for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, 40 CFR 302.6) shall submit a NOI within 15 days of becoming aware of the release. As provided in 40

CFR 122.26 (c)(1)(iii), oil and gas extraction facilities that have not discharged a reportable quantity (RQ) of oil or hazardous substances are not required to apply for a stormwater permit. Permit coverage for equipment storage and maintenance facilities of the field services sector (SIC codes 1381-1389) may be requested to manage potential impacts to surface waters.

6. Local agencies may operate a local stormwater management program or other sediment and erosion control program. The local authority may require that a copy of the application be provided to them for review and approval.

E. Termination of Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) form or other written request identifying the facility, reason why the permit is no longer needed and signed in accordance with Part IV.A.6 of this permit. Compliance with the conditions of this permit is required until a NOT is submitted.

2. Permittees may submit a NOT only after one of the following conditions have been met:

   a. All stormwater discharges associated with industrial activity have been eliminated and final stabilization (see definitions) has been achieved on all portions of the site for which the permittee is responsible.

   b. The discharges were from an inactive coal mining operation no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released; or a non-coal mining operation which has been released from applicable state or federal reclamation requirements after December 17, 1990.

   c. The discharges were from an oil or gas extraction facility where the areas affected by a reportable quantity release that resulted in coverage under this permit have been reclaimed and the facility has operated satisfactorily under a stormwater pollution prevention plan for a minimum of three years.

   d. Another operator/permittee has assumed control over all areas of the site that have not achieved final stabilization in accordance with the Transfer provisions (Part IV.B.3) of this permit.

II. STORMWATER DISCHARGE REQUIREMENTS

A. Prohibition on Non-Stormwater Discharges.

The discharge of wastewater from processing operations or sanitary facilities is not authorized by this permit. The following non-stormwater discharges may be authorized if the non-stormwater sources are identified in the SWPP plan with a description of the pollution prevention measures to be implemented: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

B. Releases in Excess of Reportable Quantities.

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302. Any release of a hazardous substance, including a release in a stormwater discharge, must be reported to the agencies identified in Part IV.A.7. The potential discharge of hazardous substances in stormwater discharges shall be minimized by including measures in the SWPP plan to prevent and respond to releases of hazardous substances. Should a reportable

quantity release occur, the SWPP plan shall be revised to prevent the reoccurrence of such a release.

C. Stormwater Pollution Prevention Plans.

All facilities covered by this permit shall prepare and implement Stormwater Pollution Prevention (SWPP) plans. The SWPP plan and revisions are subject to review by the Department. The major objectives of the plan are to identify potential sources of stormwater pollution associated with industrial activity and ensure that practices are implemented to minimize the contribution of pollutants. Stormwater management measures developed under other regulatory programs can be included in the SWPP plan or incorporated by reference. The Stormwater Pollution Prevention Plan shall include the following:

1. Site Description.

a. Provide a description of the type of activity conducted at the facility.

b. A site map indicating drainage patterns, the outline of the drainage area for each stormwater outfall, areas used for storage or disposal of materials, and any existing or planned structures to reduce stormwater contamination. Clearly identify property boundaries, natural drainage ways receiving discharges, section, township, and range or lines of latitude and longitude. The map or drawing must be of suitable scale and quality to show the required information.

c. Identify the individual(s) responsible for implementing, maintaining and revising the SWPP plan.

2. Description of Potential Pollutant Sources.

a. Identify materials that are processed, handled, stored, or disposed at your site that have the potential to be released with stormwater.

b. Provide an assessment of the various sources at the site that could contribute pollutants to stormwater runoff. Each of the following shall be evaluated for the reasonable potential to contribute pollutants: loading/unloading operations, outdoor storage, disposal and processing activities, significant dust generating activities and disturbed area vulnerable to erosion. Factors to consider in assessing potential sources are: the nature and quantity of material, degree of exposure to stormwater, history of spills or leaks, and any measures in place to control stormwater.

c. Identify sources of non-stormwater discharges that may be present and controls used to minimize the impact of the source. If the non-stormwater discharge is not authorized include measures to remove the illicit discharge.

3. Stormwater Controls.

The plan shall describe the existing or planned controls for each source or operation that may contribute pollutants in stormwater runoff. A combination of Best Management Practices (BMPs) and structural controls must be implemented as appropriate to reduce pollutant contributions in stormwater. Such practices include:

a. Good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals and parts must be handled properly to minimize exposure to stormwater. This includes measures to reduce and remove sediment tracked offsite by vehicles and the generation of dust.

b. Preventive maintenance practices must be provided for the inspection and maintenance necessary to ensure the proper operation of stormwater management devices (e.g., oil-

water separators, catch basins, and silt fences) as well as equipment used or stored at a site.

c. Spill prevention and response procedures must be developed where potential spills can occur. Where appropriate, specific handling procedures, storage requirements, spill containment and cleanup procedures shall be identified.

d. Employee training informs personnel of their responsibility in implementing the practices and controls included in the plan such as spill response, good housekeeping, and sediment control practices. Operators of active fixed location facilities, and temporary or portable facilities should provide employee training at least annually or as new employees are hired.

e. Sediment and erosion controls must be implemented on areas of operations vulnerable to erosion. The plan must conform to the guidelines provided in Appendix 1. The plan shall describe the appropriate control measures and when they will be implemented during the process for each major phase of site activity (such as clearing, grading for new mine areas or building support features). The description and implementation of controls shall address the following minimum components:

(1) Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.

(2) Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.

(3) All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations. The permittee may deviate from the manufacturer's specifications and erosion and sediment control guidelines in Appendix 1 if they provide justification for the deviation and document the rationale for the deviation in the SWPP plan.

(4) If sediment escapes the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.

f. Stormwater Management. The plan shall include a description of practices that will be installed during the construction phase of a new site or expansion to control pollutants in stormwater discharges occurring after construction operations have been completed or incorporated into the reclamation of a temporary site. Such practices may include: stormwater ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems which combine several practices. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

4. Maintenance.
All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate as

appropriate the maintenance or clean out interval for sediment controls. If site inspections, required in this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.

5. Inspections.

The plan must provide for site inspections to monitor the condition of stormwater discharge outlets and effectiveness of BMPs. The permittee shall ensure that personnel who are familiar with permit conditions and the proper installation and operation of control measures conduct an inspection of the site according to the following schedule:

a. Active facilities shall be inspected at least once (1) during a six (6) month period. The 6 month periods shall consist of the first half of the year (January – June) and the second half of the year (July – December). Inspections should be conducted within 48 hours or as soon as conditions allow following storm events of one (1) inch or more in 24 hours with at least one inspection during a 6 month period when no such events occur.

b. Operators of temporary or portable facilities (sand and gravel, batch plants) shall conduct inspections on a monthly basis while the operation is active and once every 6 months until final stabilization is achieved after ceasing operations.

c. Inactive operations shall be evaluated, at a minimum, once in three years by a qualified individual with experience in surface water pollution issues (i.e., environmental, erosion control, reclamation or engineering). The objectives of such evaluations are to: 1) assess the stability and performance of existing runoff controls, and 2) identify areas adversely impacted by runoff from the site.

The inspections shall include discharge outlets from: disturbed areas of the site that have not reached final stabilization, areas used for storage of materials, structural control measures, and vehicle maintenance areas. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. The erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly and in serviceable condition. A record of inspections shall summarize the scope of the inspection, major observations relating to the SWPP plan, the date and the name of personnel making the inspection. If necessary, the SWPP plan shall be revised based on the observations and deficiencies noted during the inspection.

6. Plan Review and Revisions.

a. The plan shall be signed in accordance with the signatory requirements, Part IV.A.6, and retained on-site for the duration of activity at the permitted location.

b. The permittee shall make plans available upon request to the Department, EPA, or, in the case of discharges to a municipal separate storm sewer system, to the operator of the municipal system.

c. The permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in stormwater.

d. Oil or gas extraction facilities which have a discharge of a reportable quantity of oil or hazardous substance after the effective date of this permit shall submit a SWPP plan and provide for compliance with the terms of the plan within 30 days of the operator becoming aware of the release.

D. Additional Terms and Conditions

1. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with the appropriate BMPs, such that the discharge does not adversely affect the receiving water or downstream landowners. The Permittee(s) must operate the discharge to minimize the release of sediment and provide energy dissipation measures to adequately protect the outlet from erosion. The dewatering is limited to stormwater and small amounts of ground water that may collect on a site. A separate permit must be obtained for the release of water from other sources such as sand and gravel wash plants.

2. Concrete wash water shall not be discharged to waters of the state, storm sewer systems or allowed to drain onto adjacent properties.

3. Bulk storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state.

4. Stormwater discharges from construction related activity inherent to the normal operation and expansion of covered facilities are covered by this permit. Such activities shall be conducted in accordance with the practices identified in the SWPP plan. Any newly constructed stormwater discharges associated with industrial activity shall be added to the SWPP plan or, if appropriate, covered by another applicable NDPDES permit.

III. SELF-MONITORING AND REPORTING

A. Non-Sampling Reporting Requirements

1. Annual Inspection Summary.
A summary of the inspections outlined in the SWPP plan requirements (Part II.C.5) shall be provided on an annual basis. The summary shall consist of a listing of all incidents of sediment or significant material residue accumulation, or erosion due to stormwater discharges observed during the calendar year. The summary shall also include the inspection date, outfall identification or location of incident, description of incident, estimated quantity of material or size of area affected, brief explanation of potential cause and remedial actions taken.

2. Location Record.
Operators of portable or temporary facilities (such as sand and gravel operations, concrete or asphalt batch plants) shall maintain a location record that shows the location where they operated facilities. The location record shall include following:

a. Permit number
b. Name and mailing address of the owner or operator
c. The site or plant name or number
d. Site location (street address, latitude and longitude, or township, range, section, and ¼)
e. Start date of each site
f. The estimated area of total disturbance in acres of each site
g. Name of water bodies within 2000 feet that may receive drainage from the site
h. Status of each site (active, reclaiming, inactive)
i. Date of final stabilization or when contoured to contain all stormwater discharges

3. Annual Reports.

A copy of the Location Record and/or Inspection Summary shall be submitted to the Department by January 31 of each year, covering the activities occurring during the preceding calendar year (January 1 through December 31). The mailing address for the Department is provided in Part III.C.

B. Sampling Self-Monitoring Requirements

1. Stormwater Sampling

Facilities are not required to conduct sampling on stormwater discharges except for the following circumstances:

a. The Department directs the permittee, by written notification, to conduct sampling at a facility covered by this permit. Instances where sampling could be required include, but are not limited to, any of the following: 1) analytical data is needed to estimate water quality impacts, 2) discharges are shown to be generally of poor quality, or 3) the SWPP plan is delinquent or determined to be insufficient.

b. A permittee can sample stormwater discharges as an alternative to reduce inspection requirements described in this section. Any request to conduct sampling in lieu of inspections shall be made in writing and approved by the Department. Permittees granted approval during prior versions of this permit may continue their sampling program.

2. Sample Procedures

The stormwater sampling, where required, must conform to the requirements, procedures and conditions contained in Appendix 2.

3. Monitoring Reports

Monitoring results shall be summarized and reported on Discharge Monitoring Report forms. If no discharge occurs during a reporting period, "no discharge" shall be reported. Each report shall cover the calendar year (January 1 through December 31). Monitoring reports must be postmarked by the last day of the month following the end of each annual reporting period (January 31).

C. Report Submittals

The reports and any other correspondence required in this permit shall be submitted to the Department at the following address:

North Dakota Department of Health
Division of Water Quality
918 East Divide Ave
Bismarck, ND 58501-1947

IV. STANDARD CONDITIONS

A. COMPLIANCE RESPONSIBILITIES BP 2008.09.18

1. Duty to Comply
The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Operation and Maintenance
The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

3. Planned Changes
The Department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the Department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

4. Duty to Provide Information
The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

5. Records Retention
All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

6. Signatory Requirements
All applications, reports or information submitted to the Department shall be signed and certified.

a. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above and submitted to the Department; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under “Compliance Responsibilities-Signatory Requirements” section is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be

signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

7. Noncompliance Notification

The permittee shall report any noncompliance which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII, Emergency Response Branch at 1.800.424.8802 and the state of North Dakota, Division of Homeland Security at 1.800.472.2121. The following occurrences of noncompliance shall be reported by telephone to the Department at 701.328.5210 by the first workday (8:00 a.m.-5:00 p.m. Central time) following the day the permittee became aware of the circumstances:

a. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit (see “Compliance Responsibilities-Bypass of Treatment Facilities” section);

b. Any upset which exceeds any effluent limitation in the permit (see “Compliance Responsibilities-Upset Conditions” section); or

c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.

A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

Reports shall be submitted to the address in the “Reporting and Recordkeeping Requirements-Reporting” section. The Department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the Department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next Discharge Monitoring Report submittal. The report shall include the four items listed in this subsection.

8. Bypass of Treatment Facilities

Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.

Bypass exceeding limitations-notification requirements.

a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.

b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in the "Compliance Responsibilities-Noncompliance Notification" section.

Prohibition of Bypass. Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required in the "Bypass of Treatment Facilities-Anticipated Bypass" section.

The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed above.

9. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the permittee can identify its cause(s);

b. The permitted facility was, at the time being, properly operated;

c. The permittee submitted notice of the upset as required under "Compliance Responsibilities-Noncompliance Notification" section; and

d. The permittee complied with any remedial measures required under "Compliance Responsibilities-Duty to Mitigate" section.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

10. Duty to Mitigate
The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

11. Removed Materials
Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

12. Duty to Reapply
Any request to have this permit renewed should be made six months prior to its expiration date.

B. GENERAL REQUIREMENTS

1. Right of Entry
The permittee shall allow Department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

2. Availability of Reports
Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

3. Transfers
This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.

4. New Limitations or Prohibitions
The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

5. Permit Actions
This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. Need to Halt or Reduce
It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

7. State Laws
Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

8. Oil and Hazardous Substance Liability
Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. Property Rights
The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

10. Severability
The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

11. General Permits
Coverage under this permit may be modified, revoked and reissued, or terminated for cause. The Department may require any operator covered by this permit to apply and obtain an individual or alternative general permit if:

a. The discharge is not in compliance with the conditions of the general permit

b. Conditions or standards have changed so that the discharge no longer qualifies for a general permit

c. Information becomes available which indicates that the permitee's discharge has a reasonable potential to contribute to an exceedance of a water quality standard

When an individual NDPDES permit is issued to an operator otherwise subject to this permit or the operator is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the operator is automatically inactivated upon the effective date of the individual permit or coverage under the alternative general permit.

12. Renotification
Any request to retain coverage under a renewal of this permit shall be made in writing to the Department at least 15 days prior to the expiration date of this permit. Upon request by the Department, a new Notice of Intent shall be submitted.

V. DEFINITIONS

“303d List” or Section 303d List” means a list of North Dakota’s water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303d of the Clean Water Act. A copy of the list is available on the state’s web site at: www.ndhealth.gov/wq/sw/A_Publications.htm

"BMP" or "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Department" means the North Dakota Department of Health, Division of Water Quality.

"Energy Dissipation" means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

“Final Stabilization” means that:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) has been achieved.

2. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.

3. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ‘‘waters of the state,’’ and areas which are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (1) or (2) above.

"Grab" sample, for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

"Inactive mining" or "inactive oil and gas operations" means areas, on or beneath lands, which were previously disturbed in activity related to the extraction, removal or recovery of coal, minerals, ores, or oil and gas from their natural deposits and were not otherwise subject to runoff controls or reclamation requirements. The term does not include areas of coal mining activity defined as "active mining area" or reclamation area" in 40 CFR 434.11 or areas which have been reclaimed, cleaned up or sealed under applicable SMCRA or equivalent requirements.

“NDPDES” means North Dakota Pollutant Discharge Elimination System.

“Normal Wetted Perimeter” means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.

“Non-stormwater discharges” means discharges other than stormwater. The term includes both process

and non-process sources. Process wastewater sources that require a separate NDPDES permit include, but are not limited to industrial processes, domestic facilities and cooling water. Non-stormwater sources that may be addressed in this permit include, but are not limited to: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

“Operator” means the owner, party, person, general contractor, corporation, or other entity that has operational control over a facility. The operator is responsible for ensuring compliance with all conditions of the permit and with development and implementation of the “stormwater pollution prevention plan”.

"Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

"Stabilized" means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater Associated with Industrial Activity” means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR § 122.26(b)(14).

"Temporary Erosion Protection" means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

“You” means the owner, operator or permittee as appropriate.

Appendix 1 - Erosion and Sediment Control Guidelines

Guidelines for designing, implementing and maintaining erosion and sediment controls.

A. Erosion and Sediment Control Practices

1. Temporary (or permanent) sediment basins, or equivalent control must be provided where ten (10) or more acres of disturbed area drain to a common location prior to the runoff leaving the site or entering surface waters. The Permittee is encouraged, but not required, to install temporary sediment basins where appropriate in areas with steep slopes or highly erodible soils even if less than ten (10) acres drains to one area. The basins must provide at least the following:

   The basins shall be sized to provide 3,600 cubic feet of storage below the outlet pipe per acre drained to the basin. Alterative designs may be used which provide storage below the outlet for a calculated volume of runoff from a 2 year, 24 hour storm and provides not less than 1800 cubic feet of storage below the outlet pipe from each acre drained to the basin.

   Basin outlets must be designed to avoid short-circuiting. The basin must be designed with the ability to allow complete basin drawdown (e.g., perforated riser pipe wrapped with filter fabric and covered with crushed gravel, pumps or other means) for maintenance activities, and provide a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.

2. Where the temporary sediment basin is not practical due to site limitations or nature of disturbance (such a developing a road way or initial stripping to build sediment pond or diversion) a combination of measures must be used within the disturbance area and down slope boundaries. In determining whether installing a sediment basin is attainable, the Permittee must consider public safety and may consider factors such as site soils, slope, and available area on site.

3. Provide temporary erosion protection or permanent cover for the exposed soil areas where activities have been completed or temporarily ceased. For those areas with a continuous positive slope within 200 lineal feet of a surface water, temporary erosion protection or permanent cover must be applied within 21 days of completing or ceasing earth moving activities. These areas include pond embankments, ditches, berms and soil stockpiles. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.

4. Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including stormwater conveyances such as curb and gutter systems, or conduits and ditches.

5. The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized at least 200 lineal feet from the property edge, or from the point of discharge to any surface water. Stabilization should be completed within 24 hours of connecting to a surface water.

6. Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

7. In order to maintain sheet flow and minimize rills and/or gullies, there should be no unbroken slope length of greater than 75 feet for slopes with a grade of 3:1 or steeper.

8. Temporary or permanent drainage ditches and sediment basins that are designed as part of a treatment system (e.g., ditches with rock check dams) require sediment control practices only as appropriate for site conditions.

9. Where appropriate, inlet protection devices may be used to reduce the amount of sediment that may enter a storm sewer system. Maintenance and cleaning of inlet protection devices, including onsite sediment and erosion controls, must be performed in a timely manner.

10. Vegetated buffers must have a minimum width of 25 feet for every 125 feet of disturbed area which drains to the buffer. For each additional 5 feet of disturbance, an additional 1 foot of width must be added. The width of the buffer shall have a slope of 5% or less and the area draining to the buffer shall have a slope of 6% or less. Concentrated flows should be minimized throughout the buffer.

    Buffers shall consist of dense grassy vegetation, 3 to 12 inches tall with uniform coverage over 90% of the buffer. Woody vegetation shall not be counted for the 90% coverage. No more than 10% of the overall buffer may be comprised of woody vegetation.

B. Maintenance Considerations Erosion and Sediment Controls

1. All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs. The Permittee(s) must investigate and comply with the following inspection and maintenance requirements:

    All control devices similar to silt fence or fiber rolls must be repaired, replaced, or supplemented when they become nonfunctional or the sediment reaches 1/3 of the height of the device. These repairs must be made within 24 hours of discovery, or as soon as field conditions allow access.

    Temporary and permanent sedimentation basins must be drained and the sediment removed when the depth of sediment collected in the basin reaches 1/2 the storage volume. Drainage and removal must be completed within 72 hours of discovery, or as soon as field conditions allow access.

2. Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of sediment being deposited by erosion. The Permittee(s) must remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems, and restabilize the areas where sediment removal results in exposed soil. The removal and stabilization must take place immediately, but no more than, seven (7) days after the discovery unless precluded by legal, regulatory, or physical access constraints. The Permittee shall use all reasonable efforts to obtain access. If precluded, removal and stabilization shall take place immediately, but no more than, seven (7) calendar days after obtaining access. The Permittee is responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work.

3. Construction site vehicle exit locations must be inspected for evidence of off-site sediment tracking onto paved surfaces. Accumulations of tracked and deposited sediment must be removed from all off-site paved surfaces, as soon as practicable, or if applicable, within a shorter time specified by local authorities.

4. If sediment escapes the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

    Vehicle tracking of sediment from the site must be minimized by BMPs such as a designated vehicle entrance to the site and providing aggregate surface on the entrance as soon as practical. The facility operator is responsible for (or making the arrangements for) street sweeping and/or scraping if

BMPs are not adequate to prevent sediment from being tracked onto the street from the facility.

5. Vegetative buffers must be inspected for proper distribution of flows, sediment accumulation and signs of rill formation. If a buffer becomes silt covered, contains rills, or is otherwise rendered ineffective, other control measures shall be implemented. Eroded areas shall be repaired and stabilized.

C. Housekeeping and Standard Operating Procedures

1. Properly handle construction debris and waste materials.

   Provide appropriate container(s) on site (or centrally located at several sites) for storing debris and other wastes until disposal. Litter and debris shall be picked-up regularly to reduce the chance for materials to be carried off the site by wind or water. Collected material shall be taken to the appropriate facility for disposal or recycling.

   Liquid or soluble materials including oil, fuel, paint and any other hazardous substances must be properly stored, to prevent spills, leaks or other discharges. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of hazardous waste must be in compliance with applicable regulations.

   Concrete wash water shall not be discharged to any waters of the state, storm sewer systems or allowed to drain onto adjacent properties. Wash water disposal must be limited to a defined area of the site or to an area designated for cement washout. The area(s) must be sufficient to contain the wash water and residual cement.

Appendix 2 - Stormwater Sampling Requirements, Procedures and Conditions
Applicable to facilities conducting a sampling based monitoring program.

A. Sample frequency and test parameters. If a permittee is notified that sampling is required or obtains approval to conduct sampling in lieu of inspections, the sampling shall, at a minimum, consist of semiannual grab samples for the following parameters:

Required Parameter	Benchmark Value	Discharge Limit
• pH		between 6.0 and 9.0 S.U.
• Oil and Grease	No visible sheen (15 mg/L)	
• Total Suspended Solids	100 mg/L	
• Total Nitrates	0.68 mg/L	
• Total Phosphorus		
• Ammonia as Nitrogen		
Facility must also test stormwater for any parameter that may be limited on discharges subject to effluent guideline limitations.		

B. Sample procedures.

1. All samples and measurements taken shall be representative of the discharge. Samples shall be collected from discharges resulting from a storm event that is greater than 0.1 inches in magnitude and that has occurred at least 72 hours from the last 0.1-inch or greater storm event which generated runoff. Snowmelt which generates runoff considered to be equivalent to or greater than a 0.1-inch precipitation event qualifies for sampling purposes. However, no more than one sample per year for each sampling site can be from a snowmelt event.

2. For discharges from holding ponds or other impoundments with a 24-hour or greater retention capability, grab samples of the discharge may be obtained at any time. For all other discharges, grab samples shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample may be taken during the first hour of the discharge, provided the permittee submits a description of why the grab sample could not be obtained during the first 30 minutes with the DMR.

3. For storm events sampled, the permittee shall record the date and duration (in hours) of the event, rainfall amount or estimates (in inches) of the event, the approximate duration since the end of the last 0.1-inch or greater storm event which generated runoff, and an estimate of the size of the drainage area. The information shall also be included on DMRs. The permittee shall have the option of maintaining a rain gauge on site or utilizing the nearest National Weather Service rain gauge station. Any gauge station used shall be located within 10 miles of the stormwater discharge.

C. Impractical or adverse conditions. When a permittee is unable to collect samples due to impractical or adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Impractical or adverse climatic conditions which may prohibit the collection of samples include: normal non-working hours, nightfall, or weather conditions that create dangerous conditions for personnel (local flooding, high winds, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impractical (drought, extended frozen periods, etc.).

D. Representative sampling. When a facility has two or more outfalls which the permittee believes would discharge substantially identical effluents, based on the features and activities within the areas drained by the outfalls, the permittee may submit a representative sampling plan in which at least 20 percent of all outfalls would be monitored. Permittees wishing to utilize this option shall submit documentation as to why they believe discharges from the sites will be substantially similar and also identify their proposed sampling sites. Upon approval by the Department, the representative sampling plan can be implemented.

E. Equivalent monitoring plans. Where appropriate, results for monitoring plans developed for other regulatory agencies or other purposes can be used for the requirements of this permit. The alternative monitoring plans can only be implemented upon written request by the permittee and subsequent written approval by the Department. When it is not feasible to develop a monitoring plan based on the percentage of outfalls, an alternative monitoring plan representative of the features and activities impacting stormwater outfalls may be developed. The alternative plan must contain an explanation of why a percentage based plan is impracticable and how the plan is representative of the stormwater discharges at the facility.

F. Test Procedures. The collection and transportation of all samples shall conform with EPA preservation techniques and holding times. All laboratory tests shall be performed by a certified laboratory in conformance with test procedures pursuant to 40 CFR 136. The method of determining the total amount of water discharged shall provide results within reasonable accuracy.

G. Recording of Results. For each sample taken, the name of the sampler, the exact place, and the date and time of the sampling shall be recorded. For each sample analyzed, the name of the laboratory, the name of the analyzer, the analytical techniques used, the test results, and the date and time of the analysis shall be recorded.

H. Additional Monitoring. If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with item F, Test Procedures, shall be included in the summary on the Discharge Monitoring Report.